

KNK RR

USDS SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #: _____
 DATE FILED: _____

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

AQUASMART TECHNOLOGIES, INC.,	x	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 08 CV 01813 (KMK)
	:	
AQUASMART, INC.,	:	STIPULATION AND ORDER OF
	:	DISMISSAL
Defendant.	:	
	x	

WHEREAS, AQUASMART TECHNOLOGIES, INC. ("Plaintiff") having filed a Complaint against AQUASMART LLC, sued herein as AQUASMART, INC., ("Defendant") (together, the "Parties") in the above-captioned Action, alleging Defendant committed trademark infringement, false designation of origin, false advertising, and unfair competition; and

WHEREAS, Defendant having filed an Answer denying all allegations of wrongdoing and alleging numerous affirmative defenses to the allegations in the Complaint; and

WHEREAS, the Parties desire to settle the controversy between them without any admission of liability and based on the terms contained herein, it is hereby:


STIPULATED AND AGREED as between the Parties hereto that:

1. Plaintiff is a Canadian corporation with its principal place of business in Vancouver, British Columbia.
2. Defendant, Aquasmart LLC, is a Florida limited liability company the name of which has been changed to Waterfront Coolers, LLC, and which has a place of business at 106 Purdy Avenue, Port Chester, New York, in the Southern District of New York.

3. This Court has jurisdiction over the Parties and over the subject matter hereof pursuant to 28 U.S.C. §§ 1331 and 1338.

4. To the best of Defendant's knowledge, Plaintiff owns the common law trademarks "Aquasmart" and "Aquasmart Technologies" for its products, including water filtering and purifying units, through its continued and active use of these marks in the United States since at least as early as 1993. Plaintiff is the owner of United States Trademark Registration No. 1875881 for the trademark AQUASMART & Design covering water conserving plumbing fixtures and equipment; namely shower heads, aerators, swivel shower-spraying heads, water purifying units, shower massagers, shower extension hoses, shower extension hoses and heads, and faucet extension hoses. (Collectively, the "Aquasmart Trademarks" or "Trademarks.")

5. Defendant agrees that it will, within 60 days from the entry of this Order, cease throughout the United States:

- a) Any and all use of the Aquasmart Trademarks or any confusingly similar variation thereof, including "Aqua Smart", alone or in combination with any other word or words or designs, in connection with the sale of any goods or services;
 - b) Any and all use of the term "Aquasmart" or any confusingly similar variation thereof, alone or in combination with any other words or design, as part of its corporate or business name, and as part of any domain name, including without limiting the foregoing, the domain name "aquasmartco.com", and on any website; and
- 

c) Notwithstanding the foregoing subsections (a) and (b), Defendant may file tax returns or other corporate filings with government agencies, and communicate with these agencies concerning such filings.

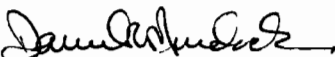
6. No award for damages, profits, costs, disbursements or attorney's fees is made herein and all Parties are to bear their own costs and attorney's fees. ✓

7. This Action is hereby dismissed with prejudice as to the Parties. The exclusive jurisdiction of this Court is retained solely for the purpose of making any further orders necessary or proper concerning this Stipulation and Order. Any motion or proceedings under this Paragraph 7 shall be venued in the United States District Court for the Southern District of New York, and the Parties consent to this Court's venue and personal jurisdiction for any such motion or proceeding under this Paragraph 7. ✓

8. This Stipulation and Order shall bind the Parties hereto and their respective successors, assigns and principals.

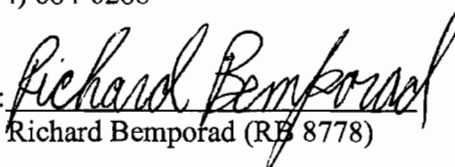
Dated: May 13, 2008

PATTON BOGGS LLP
Attorneys for Plaintiff
Aquasmart Technologies Inc.
1185 Avenue of the Americas
New York, NY 10036
(646) 557-5100


By: 
Daniel R. Murdock (DM 1498)

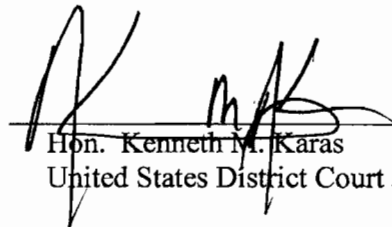
Dated: May _____, 2008

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for Defendant
Aquasmart LLC (sued as *Aquasmart, Inc.*)
The Gateway Building
One North Lexington Avenue
White Plains, NY 10601
(914) 684-0288

By: 
Richard Bemporad (RB 8778)

SO ORDERED:

 Dated May 19, 2008


Hon. Kenneth M. Karas
United States District Court Judge